

REMARKS

Applicant has carefully considered the Office Action of August 22, 2005 and offers the following remarks in response thereto.

Applicant appreciates the indication of allowable subject matter in claims 6, 15, and 24. However, in light of the deficiencies in the references of record, Applicant does not amend these claims at this time.

Claims 1-3 and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Lee et al. (hereinafter "Lee"). Applicant respectfully traverses. For a reference to be available under 35 U.S.C. § 102(b), the reference must have been published more than one year before the filing date of the application.

Applicant's filing date is December 13, 2001, and thus, for the reference to be available under 35 U.S.C. § 102(b), the reference would have had to be published prior to December 13, 2000. The publication date of Lee is April 6, 2004, and there is no other indication that Lee's disclosure was published before April 6, 2004. As such, Lee does not qualify as prior art under 35 U.S.C. § 102(b). Applicant requests withdrawal of the § 102(b) rejection on this basis.

Assuming, *arguendo*, that Lee is available under 35 U.S.C. § 102(b), a point which Applicant does not concede, Applicant further traverses on the basis that Lee does not anticipate the claims. For the Patent Office to prove anticipation, the Patent Office must show where each and every element of the claims is taught in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

Claim 1 recites "upon receipt of the message, sending a retransmission message from the link control layer of the receiver. . .". The message in question is the message from the physical layer of the receiver to a link control layer of the receiver (see element b of claim 1). The Patent Office opines that the quoted language (as well as the rest of the claim elements) is shown by Lee at col. 2, lines 49-65. Applicant respectfully traverses this assertion. Lee, col. 2, lines 49-65 states in full:

It is, therefore, an object of the present invention to provide a method in which a radio link protocol (RLP) can operate in an environment where periodic frame transmission is not guaranteed.

It is another object of the present invention to provide a method in which a physical layer of a receiving side informs a radio link protocol that no physical frame has been received.

It is further another object of the present invention to provide a method in

which a transmission side can efficiently verify whether or not the last data in a continuous transmission duration is transmitted normally in a discontinuous transmission environment.

It is yet another object of the present invention to provide a method for decreasing a retransmission timer when data is not transmitted in a discontinuous transmission mode so as to ensure efficient retransmission.

At best, this passage states that the "physical layer of a receiving side informs a radio link protocol that no physical frame has been received." *Id.* However, there is no indication of what is done after the physical layer informs the radio link protocol that the frame has not been received. Certainly, there is no teaching that upon receipt of the message, a retransmission message is sent from the link control layer of the receiver, as recited in claim 1.

While not specifically cited by the Patent Office, Applicant notes that Lee does state that the "physical channel/multiplexing device transfers an erasure frame to the radio link protocol when a received physical channel frame is in bad condition." (Lee, col. 9, lines 29-32). Lee further states that the radio link protocol operates as defined in RLP Type 2 with regard to the erasure frame (Lee, col. 9, lines 36-39). However, a study of the RLP Type 2 standard does not show that a retransmission request is generated on receipt of the erasure frame. Rather, the RLP Type 2 standard does not increase the NAK counter when an erasure frame is received. Thus, Lee does not show the claim element recited in claim 1. Since Lee does not show the claim element, Lee cannot anticipate claim 1. Claims 2, 3, and 5 depend from claim 1 and are not anticipated for at least the same reasons. Applicant requests withdrawal of the § 102(b) rejection of claims 1-3 and 5 on this basis, as well.

Claims 4, 7-14, 16-23, and 25-27 were rejected under 35 U.S.C. § 103 as being unpatentable over Lee in view of Chang et al. (hereinafter "Chang"). Applicant respectfully traverses. For the Patent Office to combine references in an obviousness rejection, the Patent Office must prove a suggestion to combine the references. To prove that there is a suggestion to combine the references, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Even if the combination of references is proper, to establish *prima facie* obviousness, the combination must still teach or suggest all the claim elements. MPEP § 2143.03.

Applicant initially traverses the rejection because the Patent Office has not properly proven the suggestion to combine the references. With respect to claims 4, 13, and 22, the Patent Office states that the motivation to combine the references is “that the sender can identify the group for data or an RLP frame to retransmit in physical layer assisted retransmissions. . .” (Office Action of August 22, 2005, page 4, lines 2-4). This asserted motivation lacks the required evidence in support thereof. Since the stated motivation lacks the required actual evidence, the motivation to combine the references is improper. Since the motivation is improper, the combination is improper. Since the combination is improper, the rejection is improper, and the Patent Office has not established obviousness. Since the Patent Office has not established obviousness, the claims are allowable.

For claims 10-12, 14, 19-21, and 23, the Patent Office provides no motivation to combine the references. That is, while the Patent Office asserts on page 5, lines 1-6 of the Office Action of August 22, 2005 that the combination of references would be obvious, there is no reason provided for why the combination is obvious. Since the Patent Office has not provided a motivation to combine the references, the combination is improper. Since the combination is improper, the rejection is improper, and the Patent Office has not established obviousness. Since the Patent Office has not established obviousness, the claims are allowable.

For claims 7, 16, and 25, the Patent Office states that the motivation is “for sending acknowledgment message as a retransmission message in physical layer assisted retransmission.” (Office Action of August 22, 2005, page 5, lines 13-15). Again, this asserted motivation lacks the required evidence in support thereof. Since the stated motivation lacks the required actual evidence, the motivation to combine the references is improper. Since the motivation is improper, the combination is improper. Since the combination is improper, the rejection is improper, and the Patent Office has not established obviousness. Since the Patent Office has not established obviousness, the claims are allowable.

For claims 8, 9, 17, 18, 26, and 27 the Patent Office states that the motivation is “for setting and resetting timers for detecting and retransmitting frames in physical layer assisted retransmission.” (Office Action of August 22, 2005, page 6, lines 8-10). Again, this asserted motivation lacks the required evidence in support thereof. Since the stated motivation lacks the required actual evidence, the motivation to combine the references is improper. Since the motivation is improper, the combination is improper. Since the combination is improper, the

rejection is improper, and the Patent Office has not established obviousness. Since the Patent Office has not established obviousness, the claims are allowable.

Even if the references are properly combinable, a point that Applicant does not concede, the combination fails to establish obviousness because the combination does not teach or suggest all the claim elements. As explained above for claim 1, claims 4 and 7-9 effectively recite (by virtue of their dependence on claim 1) **"upon receipt of the message, sending a retransmission message from the link control layer of the receiver. . ."** and this element is not taught or suggested by Lee. Nothing in Chang cures the deficiencies of Lee. Since the references individually do not teach or suggest this element, the combination of references cannot teach or suggest this claim element. Since the combination does not teach or suggest this claim element, the combination does not establish obviousness. Since the combination does not establish obviousness, the claims are allowable.

Independent claims 10 and 19 recite similar elements and are not obvious for at least the same reasons. Applicant requests withdrawal of the § 103 rejection for this reason, also.

Applicant requests reconsideration of the rejections in light of the remarks presented herein. The references do not teach or suggest **"upon receipt of the message, sending a retransmission message from the link control layer of the receiver. . ."**, as recited in the claims, and the references are not properly combined. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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